

petitioner IFP status, see Dkt. No. 4, but has not directed service of his petition. For the reasons set forth below, the Court recommends that petitioner's § 2254 petition be DENIED and this case DISMISSED without prejudice.

II. DISCUSSION

A. Petitioner's Habeas Claims Are Unexhausted

The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), Pub. L. No. 104-132, 110 Stat. 1214 (1996), governs petitions for habeas corpus filed by prisoners who were convicted in state courts. 28 U.S.C. § 2254. In order for a federal district court to review the merits of a § 2254 petition, the petitioner must first exhaust his state court remedies. 28 U.S.C. § 2254(b)(1)(A); *Fields v. Waddington*, 401 F.3d 1018, 1020 (9th Cir. 2005). The purpose of the exhaustion doctrine is to preserve federal-state comity which, in this setting, provides state courts an initial opportunity to correct violations of its prisoners' federal rights. *Picard v. Connor*, 404 U.S. 270, 275 (1971); *Ex parte Royall*, 117 U.S. 241, 251 (1886). A petitioner can satisfy the exhaustion requirement by either (1) fairly and fully presenting each of his federal claims to the highest state court from which a decision can be rendered, or (2) demonstrating that no state remedies are available to him. *Johnson v. Zenon*, 88 F.3d 828, 829 (9th Cir. 1996). A petitioner fairly and fully presents a claim if he submits it "(1) to the proper forum, (2) through the proper vehicle, and (3) by providing the proper factual and legal basis for the claim." *Insyxiengmay v. Morgan*, 403 F.3d 657, 668 (9th Cir. 2005) (internal citations omitted).

The Ninth Circuit requires that a habeas petitioner explicitly identify the federal basis of his claims by identifying specific portions of the Constitution or federal statutes, or by citing federal or state case law that analyzes the Constitution. *Insyxiengmay*, 403 F.3d at 668; *Fields*, 401 F.3d at 1021. Alluding to broad constitutional principles, without more, does not satisfy the exhaustion requirement. *Id.* Although *pro se* petitioners may be entitled to more leniency than habeas petitioners with counsel, *Sanders v. Ryder*, 342 F.3d 991, 999 (9th Cir.

01 2003), such petitioners ordinarily do not satisfy the exhaustion requirement if the state court
02 must read beyond their motion in order to ascertain their claims. *Baldwin v. Reese*, 541 U.S.
03 27, 32 (2004).

04 Here, it is clear from the face of the petition that petitioner has not exhausted any of the
05 grounds for relief presented therein. *See* Dkt. No. 1-1 at 2-12. Petitioner insists that no direct
06 appeal was available or applicable, and implies that his lack of knowledge and lack of
07 assistance from the public defender's office obviates the exhaustion requirement. The Court
08 disagrees. The claims presented by petitioner that call into question the validity of his
09 conviction appear to be claims eligible for review in the state courts. Even assuming that a
10 direct appeal was not available to petitioner, the Washington Rules of Appellate Procedure
11 provide an avenue through which a petitioner may seek review of a restraint which is alleged to
12 be unlawful. *See* R.A.P. 16.4. Petitioner apparently made no effort to seek review of his
13 restraints under the provisions of that rule. In sum, petitioner has made no effort to exhaust his
14 federal habeas claims in the state courts, those claims are not eligible for federal habeas review.

15 B. Petitioner's Prison Condition Claims Are Not Cognizable Under § 2254

16 In certain sections of plaintiff's petition, he appears to be challenging the conditions, as
17 opposed to the validity, of his confinement. *See* Dkt. No. 1-1 at 7, 19-20, 25-27, 30-31. Such
18 allegations, as well as petitioner's claim for monetary relief attendant thereto, are not
19 cognizable under the legal framework of habeas corpus, and should instead be brought in a
20 civil rights action pursuant to 42 U.S.C. § 1983. *See, e.g., Nelson v. Campbell*, 541 U.S. 637,
21 643 (2004) ("[C]onstitutional claims that merely challenge the conditions of a prisoner's
22 confinement, whether the inmate seeks monetary or injunctive relief, fall outside" the core of
23 habeas corpus.); *Muhammad v. Close*, 540 U.S. 749, 749 (2004) (per curiam) ("Challenges to
24 the validity of any confinement . . . are the province of habeas corpus; requests for relief
25 turning on circumstances of confinement may be presented in a § 1983 action.").

01 III. CONCLUSION

02 For the foregoing reasons, the Court recommends that petitioner's § 2254 petition be
03 DENIED and this case DISMISSED without prejudice. A proposed order accompanies this
04 Report and Recommendation.

05 DATED this 15th day of October, 2007.

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08 JAMES P. DONOHUE
09 United States Magistrate Judge
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